

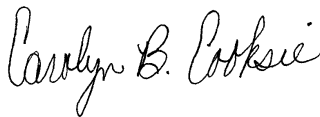
UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency  
Washington, DC 20250

Guaranteed Loan Making and Servicing  
2-FLP

Amendment 8

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A

Reasons for  
Amendment

The term of the **new** Shared Appreciation Agreement has changed from 10 years to 5 years.

The language in the sample notification letters in subparagraphs 288 D and H have been amended to allow this term change to be incorporated and to service any existing 10-year Shared Appreciation Agreements that may be expiring.

Page Control Chart

TC	Text	Exhibit
	11-55, 11-56 11-59, 11-60	

**C****Events That  
Trigger  
Recapture**

**Recapture of any appreciation of real estate security will take place at the end of the term of the Agreement, or sooner, if the following occurs:**

- **on the conveyance of the real estate security (or a portion thereof) by the borrower**

**Note: If only a portion of the real estate is conveyed, recapture will only be triggered against the portion conveyed. Partial releases will be handled in accordance with § 762.141(b) (paragraph 280); and transfer of title to the spouse of the borrower on the death of such borrower, will not be treated as a conveyance under the agreement.**

- **on the repayment of the loans**
- **if the borrower ceases farming operations.**

Recapture may also occur in either of the following cases:

- the note FSA-1980-89 is attached to is accelerated
- the borrower dies and there is no spouse to whom the property will be conveyed.

After FSA-1980-89 has been executed, the lender must monitor the borrower's compliance with FSA-1980-89. This includes determining when an event that activates FSA-1980-89 occurs.

When the borrower performs an action that triggers the collection under FSA-1980-89, the lender will obtain an appraisal of the collateral, determine the recapture due, if any, and notify the borrower of the amount due in writing. **Security values will be determined by appraisals obtained by the lender and meeting the requirements listed in 7 CFR 762.127** (paragraphs 181 through 183). The lender will pay for the appraisal or recapture the appraisal expense from the borrower. If the sale of security triggers recapture and the price received for the security is higher than its appraised value, then the sale price will serve as the upper limit when calculating incremental increase in the appreciation of security.

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**C****Events That Trigger Recapture (Continued)**

After recapture, the lender will give FSA its pro-rata share of the proceeds or service the account according to subparagraph F.

To help lenders monitor a borrower's compliance with FSA-1980-89, authorized Agency Officials may encourage lenders to use the letter in subparagraph D to remind the borrower of the FSA-1980-89 commitment.

**D****Example of Letter Reminding Loan Borrowers of Potential Writedown Recapture**

The following is an example of a letter for reminding loan borrowers of potential writedown recapture.

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Borrower's Address

Dear (Borrower):

On Month, Day, Year, Name of Lender, wrote down \$\_\_\_\_\_ of a debt that you owed in connection with a guarantee that was provided by the Farm Service Agency (FSA). In consideration for receiving this writedown, you executed a \_\_\_\_10-year\_\_\_\_5-year Shared Appreciation Agreement (Agreement) in connection with the real estate that you pledged as collateral for this loan. We have enclosed a copy of the Agreement for your reference.

This letter is to remind you of the possibility that you may have to repay all or a portion of the amount of your loan that was written down. The Agreement that you signed requires you to repay all or a portion of the debt written down if the real estate that secured the loans increased in value and one of the following occurs:

- \_\_\_\_10 years\_\_\_\_5 years have passed since you signed the Agreement;
- Title of the real estate security (or a portion thereof) was conveyed (with certain exceptions);
- The remainder of the loan has been repaid; or
- You have quit farming.

If you believe the value of your property has increased, you will need to consider this potential liability when you make future plans. The amount of repayment cannot exceed the amount written down.

If you would like any additional information on how this Agreement can affect you and what actions you need to take, please contact this office.

Sincerely,

Lender's Representative  
Enclosure

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**G****Basis for the Amount of Recapture**

Because of 2 consecutive years of drought that destroyed crops, a farmer and lender devised a restructuring plan where \$200,000 of remaining debt was written down to \$100,000 and FSA-1980-89 was executed. FO had been guaranteed by FSA at 90 percent. An appraisal at the time of the writedown valued the farmer's security at \$75,000.

One year later the farmer sells his farm for \$85,000. The Basis for the Amount of Recapture is equal to:

Value of real estate security (appraisal or sale price, whichever one is higher) at the time of a recapture triggering event minus value of real estate security when FSA-1980-89 was executed.

Basis for the Amount of Recapture:  $\$85,000 - \$75,000 = \$10,000$ .

Since Basis for the Amount of Recapture is positive, the borrower will be required to pay the lender a percentage of the recaptured monies. The percentage to be paid to the lender within the first 4 years of FSA-1980-89 execution is 75 percent (the percentage drops to 50 percent 4 years after FSA-1980-89 execution). Therefore, the farmer owes his lender the following:

$\$10,000 \times 75\% = \$7,500$  due the lender.

FSA is entitled to the portion of the shared appreciation equal to the rate of the guarantee on the loan. Therefore, in this case, FSA's pro-rata share is equal to:

$\$7,500 \times 90\% = \$6,750$  due FSA.

At least annually, the Authorized Agency Official will contact all lenders with active FSA-1980-89's to determine whether any FSA-1980-89 monies have been collected. To help lenders in their FSA-1980-89 monitoring responsibilities, a copy of the letter in subparagraph H may be used by FSA employees when performing this annual lender contact.

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**H**  
**Example of**  
**Servicing**  
**Recapture Debt**  
**Reminder Letter**

This is an example of a letter for reminding lenders of guaranteed loan accounts that received a writedown.

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Lender's Address

Dear (Lender's Representative or Sir/Madam):

Our records indicate that the Farm Service Agency (FSA), paid your institution \$\_\_\_ on Month, Day, Year, to reimburse it for the guaranteed portion of a \$\_\_\_ loss that you suffered by writing down the account of your borrower Borrower's Name. This letter is to remind you that the borrower signed a Shared Appreciation Agreement (SAA) in connection with this writedown and you are obligated to monitor that agreement. We have enclosed a copy of SAA for your reference and provided you with a letter that you may use to remind your borrower of the potential for recapture under SAA.

SAA requires the borrower to repay all or a portion of the debt written down as a result of an increase in value of the real estate that secured the loans written down. This recapture is triggered by any of the following events:

- \_\_\_10 years \_\_\_5 years have passed since the borrower executed SAA;
- Title to the real estate security (or a portion thereof) was conveyed by the borrower to someone other than the borrower's spouse upon the death of the borrower;
- The loans have been repaid; and
- The borrower quits farming.

Please review your records, consult with the borrower, review land records, or take other actions to determine whether any of the triggering actions have occurred in this case. If so, you should inform the borrower of the amount that they owe your institution under the terms of their agreement. If SAA has not been triggered, you may still wish to remind the borrower of the terms of this agreement, to allow sufficient time for them to plan for this possibility. You are responsible for obtaining any appraisals necessary to document the amount of appreciation; however, you may pass the expense to the borrower.

I sincerely appreciate your efforts to meet the credit needs of the farmers in our area. If you would like any additional information or assistance on this subject, please contact this office.

Sincerely,

Loan Servicing Official  
 Enclosure

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